

F3DVHARP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 84 (KPF)

5 STEVEN HART,

6 Defendant.

PLEA

7 -----x
8 New York, N.Y.
9 March 13, 2015
3:05 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 JASON H. COWLEY

Assistant United States Attorney

18 JEFFREY T. KERN

19 KEVIN R. PUVALOWSKI

Attorneys for Defendant

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(Case called)

THE COURT: Mr. Puvalowski, do you have a copy of the indictment? And if you have it, can you place it in front of your client.

MR. PUVALOWSKI: Yes, your Honor.

THE COURT: Thank you.

MR. COWLEY: Your Honor, just so the record is clear, it's an information.

THE COURT: Information. Excuse me. I knew that's what threw them off. Thank you.

Mr. Hart, I'm going to ask you, please, to bring the microphone as close to you as possible, only because the acoustics in this courtroom are what they are.

Your counsel has placed before you a copy of the information; I believe it was the information on which you were arraigned a few weeks ago.

And I've been told, sir, that it is your intention today to change your plea and to plead guilty to Counts One and Two of this information.

Is that correct, sir?

THE DEFENDANT: Yes, it is.

THE COURT: Mr. Hart, I'm going to ask you a series of questions. And these questions serve a number of purposes, so let me tell you what some of those purposes are.

I want to make sure, first, that you are competent and

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1 that you understand what's going on today. I want to make sure
2 you are pleading guilty because you are, in fact, guilty of
3 these offenses and not for some other reason.

4 MR. PUVALOWSKI: Judge, would you prefer if we rise?

5 THE COURT: No, I want him to be comfortable. If he's
6 more comfortable sitting down, he's welcome to sit down. I
7 appreciate that many times folks stand as a formality, but I
8 care more that he's comfortable. Of course, Mr. Hart, if
9 you're more comfortable standing, you can do that, too.

10 THE DEFENDANT: I'm fine.

11 THE COURT: Okay. So again, sir, these questions are
12 designed to make sure that you are pleading guilty because you
13 are, in fact, guilty; that you understand what your rights are,
14 what rights you would be waiving; that you understand what the
15 consequences would be of a guilty plea.

16 The most important thing today, sir, is that you
17 understand what's going on. So if at any point in these
18 proceedings there's something about my question that doesn't
19 make sense or there's something that you want to ask of your
20 counsel, we'll take whatever breaks you need. So please feel
21 free to do that; let me know if something I'm asking you
22 doesn't make sense or let me know if you need to take a break
23 just to discuss something with your counsel.

24 All right, sir?

25 THE DEFENDANT: Okay.

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1 THE COURT: Mr. Lopez, could you please swear in
2 Mr. Hart.

3 (Defendant sworn)

4 THE DEPUTY CLERK: Please state your name for the
5 record.

6 THE DEFENDANT: Steven Hart.

7 THE DEPUTY CLERK: Thank you. You may be seated.

8 THE COURT: Mr. Hart, the significance of you being
9 placed under oath is that if at any point in time you answer
10 any of my questions falsely, you may be prosecuted for the
11 separate offense of perjury.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Mr. Hart, how old are you?

15 THE DEFENDANT: Forty-three.

16 THE COURT: How far did you go in school, sir?

17 THE DEFENDANT: I had a postgraduate degree at NYU
18 Stern.

19 THE COURT: Have you ever been treated or hospitalized
20 for any form of mental illness?

21 THE DEFENDANT: No.

22 THE COURT: Have you ever been hospitalized or treated
23 for any form of addiction, including drug or alcohol addiction?

24 THE DEFENDANT: No.

25 THE COURT: Have you taken any drugs, medicine, or

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1 pills in the last two days?

2 THE DEFENDANT: No.

3 THE COURT: Have you consumed any alcoholic beverages
4 in the past two days?

5 THE DEFENDANT: No.

6 THE COURT: Is your mind clear today, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand what is happening?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Puvalowski, have you discussed this
11 matter with Mr. Hart?

12 MR. PUVALOWSKI: I have, your Honor.

13 THE COURT: Do you believe that he understands what he
14 would be doing, what rights he would be waiving by pleading
15 guilty?

16 MR. PUVALOWSKI: I do, your Honor.

17 THE COURT: Do you have any reason to doubt his
18 competence to plead guilty?

19 MR. PUVALOWSKI: No.

20 THE COURT: Do you believe he's understanding the
21 nature of these proceedings?

22 MR. PUVALOWSKI: I do.

23 THE COURT: Mr. Cowley, do you have any doubt as to
24 Mr. Hart's competence to plead guilty?

25 MR. COWLEY: I do not, your Honor.

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1 THE COURT: Mr. Hart, based on your answers of the
2 questions I've just asked you, my observations of your demeanor
3 here in court today, and the discussions I've just had with
4 your counsel and the counsel for the government, I find that
5 you are fully competent to enter a knowing and voluntary plea
6 of guilty.

7 Now, you have seen the information before you, sir.
8 Have you had enough of an opportunity to discuss with your
9 attorneys the charges to which you intend to plead guilty and
10 any possible defenses that you might have to these charges?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: Have your attorneys explained to you the
13 consequences of entering a plea of guilty?

14 THE DEFENDANT: Yes, they have.

15 THE COURT: And are you satisfied with your attorneys'
16 representations of you in this matter?

17 THE DEFENDANT: Yes.

18 THE COURT: Then, Mr. Hart, what I would like to do is
19 turn to the rights that you have and rights that you be waiving
20 by pleading guilty. Once again, sir, the most important thing
21 is that you understand what I am saying; so, again, you'll let
22 me know if you need any sort of break or any sort of
23 clarification.

24 I'll begin with this: Under the Constitution and laws
25 of the United States, you have the right to plead not guilty to

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1 the charges contained in the information.

2 Do you understand that, sir?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: If you decided to plead not guilty, you
5 would be entitled to a speedy and public trial by a jury on the
6 charges contained in the information.

7 Do you understand that, sir?

8 THE DEFENDANT: I understand.

9 THE COURT: At a trial, you would be presumed to be
10 innocent, and the government would be required to prove you
11 guilty by competent evidence beyond a reasonable doubt before
12 you could be found guilty.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: A jury of 12 people would have to find
16 that you were guilty, and you would not have to prove that you
17 were innocent if you were to go to trial.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: At that trial and at every stage of your
21 case, you would be entitled to be represented by counsel. And
22 if at any point in time you were unable to afford an attorney,
23 one would be appointed for you at public expense, that is, free
24 of cost, in order to represent you.

25 Do you understand that, sir?

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1 THE DEFENDANT: Yes, I understand.

2 THE COURT: If there were a trial in this case, the
3 government's witnesses would have to come to court and testify
4 in your presence. And your attorneys could cross-examine the
5 witnesses for the government, they could offer evidence on your
6 behalf, they could challenge the evidence that was offered by
7 the government. You would also have the right to have
8 subpoenas issued or other process used to compel witnesses to
9 testify in your defense.

10 Just to be clear, sir, you would have no obligation to
11 present any case, but if you wanted to, your attorneys could.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, I understand.

14 THE COURT: If there were a trial in this case, you
15 would have the right to testify if you chose to do so, but you
16 would also have the right not to testify if you chose to do so.
17 And if you decided not to testify, no one, including the jury,
18 could draw any inference or suggestion of guilt from the fact
19 that you did not testify.

20 Do you understand that?

21 THE DEFENDANT: Yes, I understand.

22 THE COURT: Mr. Hart, I want to make sure that you've
23 had an opportunity to discuss with your attorneys whether there
24 is any basis to seek suppression or exclusion of some or all of
25 the government's evidence against you on the grounds that your

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1 constitutional rights may have been violated. Now, again, sir,
2 I'm not saying there were, I just want to make sure you've had
3 a chance to talk to your attorneys about that.

4 THE DEFENDANT: Yes, I have.

5 THE COURT: And do you understand, sir, that by
6 entering a guilty plea, one of the things that you do is give
7 up your right to seek suppression or exclusion of the evidence
8 against you?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: Mr. Hart, if this case were to proceed to
11 trial and if you were to be convicted at a trial, you would
12 have the right to appeal from that verdict.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: And even now, sir, as you're entering this
16 guilty plea, you have the right to change your mind and to
17 enter a plea of not guilty, and we can proceed to trial on the
18 charges contained in the information.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: If you plead guilty and if I accept your
22 guilty plea, you will give up your right to a trial and the
23 other rights that I've just discussed with you, other than your
24 right to an attorney, because you have that at all stages of
25 your prosecution, whether you plead guilty or go to trial.

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1 If you do plead guilty, however, there will be no
2 trial, and I will sentence you based on the statements that you
3 make today and statements that I receive in the form of
4 sentencing submissions from your attorneys and from the
5 attorney for the government, and from a presentence
6 investigation report that I receive from the United States
7 Probation Office.

8 Also, sir, if you plead guilty, there will be no
9 appeal on the particular issue of whether or not the government
10 can use the evidence it has against you. And there would also
11 be no appeal on the particular issue of whether you did or did
12 not commit the offenses to which you plead guilty.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes, I understand.

15 THE COURT: And Mr. Hart, if you plead guilty, there
16 is a degree to which you will have to give up your right not to
17 incriminate yourself. And that is because I need to ask you a
18 series of questions later on in this proceeding that confirms
19 for me that you're pleading guilty because you are, in fact,
20 guilty, and not for some other reason. And in the course of
21 answering those questions, you will have to admit and
22 acknowledge your guilt.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, I understand.

25 THE COURT: Mr. Hart, do you understand each of the

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1 rights we've been discussing?

2 THE DEFENDANT: Yes.

3 THE COURT: Would you like me to provide any
4 additional information about any of them?

5 THE DEFENDANT: No, thank you.

6 THE COURT: And do you wish to continue at this time
7 to give up your right to trial and the other rights that I've
8 been discussing and enter a plea of guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: I understand, sir, that you're charged in
11 the two counts of the information to which you're going to
12 plead guilty with obstruction of justice and perjury; is that
13 correct?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Cowley, could you please state the
16 elements of each of these offenses.

17 MR. COWLEY: Yes, your Honor.

18 With regard to Count One, the obstruction of justice
19 count, which is charged in violation of 18 U.S.C., Section
20 1505, your Honor, that crime has three elements:

21 One, that on or about the dates set forth in the
22 information, a proceeding was pending before an agency of the
23 United States, in this case the United States Securities and
24 Exchange Commission.

25 Two, that the defendant was aware that a proceeding

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1 was pending before that agency.

2 And, three, that the defendant corruptly endeavored to
3 influence, obstruct or impede the due and proper administration
4 of justice of the law under which the proceeding was being
5 conducted.

6 In regard to Count Two, your Honor, the perjury count,
7 which is charged in violation of 18 U.S.C., Section 1621, that
8 count has four elements, your Honor:

9 One, that the defendant took an oath to testify
10 truthfully before the SEC, a body authorized by law to
11 administer such oaths.

12 Two, the defendant made false statements as to matters
13 about which the defendant testified under oath as set forth in
14 the information.

15 Three, that the matters as to which it is charged that
16 the defendant made false statements were material to the issue
17 under inquiry by the SEC.

18 And, four, that such false statements were willingly
19 made.

20 THE COURT: Thank you.

21 Mr. Hart, did you hear the prosecutor speak a moment
22 ago?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you understand that these are the
25 elements that the government would have to prove at a trial

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1 beyond a reasonable doubt?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, I believe, as well, although
4 Mr. Cowley will tell me if I'm mistaken, there is also perhaps
5 a venue requirement to each of these offenses, or is there
6 none?

7 MR. COWLEY: There is a venue requirement, your Honor.

8 THE COURT: Okay. Let me just momentarily speak about
9 that, sir.

10 Mr. Hart, what that means is in addition to everything
11 that you've just heard Mr. Cowley say, the government would
12 also have to prove that some portion of these offenses took
13 place in the Southern District of New York, in this district,
14 including Manhattan, the Bronx, Westchester County. That
15 element would have to be proven by a slightly lesser standard
16 of what's called preponderance of the evidence. But those,
17 collectively speaking, are all of the things the government
18 would have to prove if this case were to go to trial.

19 All right, sir?

20 THE DEFENDANT: Yes.

21 THE COURT: Let me then talk to you about the maximum
22 possible penalties that are associated with these offenses.
23 And I'm using the term "maximum" to refer to the most that
24 could possibly be imposed. I'm not meaning to suggest in this
25 discussion that this is exactly what you're going to receive,

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1 but I do want to make sure that you understand that by pleading
2 guilty, you're subjecting yourself to any combination of
3 punishments up to the statutory maximum.

4 So do you understand that, sir?

5 THE DEFENDANT: Yes.

6 THE COURT: Let me then talk first about the possible
7 restrictions on your liberty.

8 The maximum term of imprisonment for each of these
9 offenses is five years, and that could be followed by a term of
10 up to three years of supervised release. And when I use the
11 term "supervised release," I'm sure you've discussed this with
12 your attorneys, but what I'm referring to is a period during
13 which you would be subject to supervision by the United States
14 Probation Office. And during that period, there would be terms
15 and conditions of supervised release.

16 If you were to violate those terms and conditions of
17 supervised release, the possibility exists that your supervised
18 release term could be revoked, and that you could be sent to
19 jail to serve a period of time without a jury trial. If that
20 were to happen, sir, you would get no credit for any time that
21 you might have spent on this offense, and you would get no
22 credit for any time that you spent on post-release supervision
23 without having any incident.

24 So have you had a chance to talk to your attorneys
25 about supervised release?

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1 THE DEFENDANT: Yes, I understand.

2 THE COURT: I also want to make sure you understand,
3 sir, that there's no parole in the federal system. So if you
4 were to be sentenced to a term of imprisonment, you would not
5 be released early on parole. There is credit in the federal
6 system for good behavior, but even were you to receive that
7 credit, you would still have to serve approximately 85 percent
8 of the term of imprisonment.

9 Do you understand that, sir?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: In addition to these restrictions on your
12 liberty, the offenses to which you propose to plead guilty also
13 have certain financial penalties. The maximum allowable fine
14 for each offense is \$500,000 or twice the gross pecuniary gain
15 derived from the offense, or twice the gross pecuniary loss to
16 persons other than yourself, whichever of these three is the
17 greatest. I can also order restitution to any person or entity
18 injured as a result of your criminal conduct.

19 Now, do the parties believe forfeiture is not
20 appropriate here on these offenses?

21 MR. COWLEY: That's correct, your Honor, there is no
22 forfeiture for these offenses.

23 THE COURT: Then I will not bother discussing
24 forfeiture with you, sir. But I must order a mandatory special
25 assessment of \$100 per count. So in this case it would be

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1 \$200. That's a mandatory special assessment, meaning I can't
2 not impose it.

3 Do you understand that these, sir, are the maximum
4 possible penalties to which you are exposed with a guilty plea?

5 THE DEFENDANT: One second, please.

6 THE COURT: Of course.

7 (Pause)

8 THE DEFENDANT: I understand.

9 THE COURT: I also want to make sure you understand,
10 sir, again, just because we are talking about maximum possible
11 terms, that the maximum total term of imprisonment, if you
12 stack those two counts together, is ten years imprisonment.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Are you a United States citizen, Mr. Hart?

16 THE DEFENDANT: Yes.

17 THE COURT: I ask you that, sir, because some of the
18 folks who appear before me are not, and in those cases, a
19 guilty plea can have adverse immigration consequences. It
20 doesn't apply to you.

21 This other question also may not apply to you, but I
22 am obligated to ask it: Are you serving any other sentence,
23 state or federal, anywhere, for any offense?

24 THE DEFENDANT: No, I'm not.

25 THE COURT: And to the best of your knowledge, sir,

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1 are you being prosecuted in any other jurisdiction?

2 THE DEFENDANT: No, I'm not.

3 THE COURT: Again, sir, I have defendants who appear
4 before me who are, and in that case I have to talk to them
5 about how the resolution of this case impacts that case.

6 I mentioned you are a citizen, sir, so you don't have
7 adverse immigration consequences, but there is this: It is
8 possible that as a result of your guilty plea, you may lose
9 certain civil rights, to the extent you have them today, or to
10 the extent that you might otherwise obtain them in the future.
11 These would include the right to vote, the right to hold public
12 office, the right to serve on a jury, and the right to possess
13 a firearm.

14 Are you aware of that, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you had a chance to talk to your
17 attorneys about the United States Sentencing Guidelines?

18 THE DEFENDANT: Yes.

19 THE COURT: And just briefly speaking, they are
20 something that I must consider in connection with any
21 sentencing that I do. I mention them to you, sir, because I
22 want to make sure that you understand that to the extent that
23 your attorneys or the government or anyone has attempted to
24 predict the sentence that you will ultimately receive, their
25 predictions could be wrong. I am the person who will be

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1 sentencing you, and I will not be able to do that until I hear
2 from you today about your guilty plea, until I receive the
3 presentence investigation report that I've told you about that
4 the probation office will prepare, and until I receive the
5 sentencing submissions from the parties. And after that, I
6 myself need to look at the guidelines, and I also need to look
7 at various sentencing factors that I know you've discussed with
8 your counsel that are set forth in Section 3553(a) of Title 18
9 of the United States Code.

10 So, sir, let me ask you this question first:

11 Have you had a chance to talk to your attorneys about
12 the process of sentencing?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: And do you also understand the things that
15 happen that I have to do prior to sentence?

16 THE DEFENDANT: Yes.

17 THE COURT: Even if the sentence that you ultimately
18 receive is different from what anyone might have told you it
19 is, and even if it's different from what you expect or hope
20 for, you will still be bound by your guilty plea; you will not
21 be able to withdraw your plea of guilty to these counts.

22 Do you understand that, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: I've been told that there is a written
25 plea agreement between you and your attorneys and counsel for

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1 the government. I've been given a document. The document I
2 have is dated March 6th of this year.

3 Now, do you have a copy of a similar document in front
4 of you? If not, I will hand you my copy.

5 MR. COWLEY: I can grab that, your Honor, with the
6 Court's permission. That's the original, your Honor. I have
7 another copy here for you if you'd like.

8 THE COURT: Thank you very much.

9 MR. COWLEY: The original has the defendant's
10 signature on it; that copy does not.

11 THE COURT: That's okay.

12 THE DEPUTY CLERK: He has a copy, your Honor.

13 THE COURT: All right. Then I now have two. That is
14 fine. Thank you, Mr. Cowley.

15 All right. Mr. Hart, the copy that I have I have
16 marked as Court Exhibit 2, because I think the last time we
17 were together there was a waiver of indictment form that I had
18 marked as Court Exhibit 1.

19 So the document that I have, sir, is six pages long.
20 Is that the same length as the document before you?

21 THE DEFENDANT: Yes, it is.

22 THE COURT: Could you turn, please, to the sixth page.

23 All right. You're there now, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: On this page, at least on my version,

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1 there are several signatures. Are there signatures on the
2 version that you have, as well?

3 MR. PUVALOWSKI: Your Honor, the version that's in
4 front of the defendant has the signatures from the government.
5 Ours are blank. But I think if you ask the defendant, he will
6 confirm that he did, in fact, sign the version that's in your
7 hand.

8 THE COURT: Okay. Mr. Hart, are you able to see the
9 last page of this document, or would you like me to hand it
10 back to you?

11 THE DEFENDANT: I can see it.

12 THE COURT: There are two signatures. Is one of them
13 yours?

14 THE DEFENDANT: Yes.

15 THE COURT: Did you sign this today, sir?

16 THE DEFENDANT: Yes.

17 THE COURT: Did you read this document before you
18 signed it?

19 THE DEFENDANT: I did.

20 THE COURT: Did you discuss it with your attorney
21 before you signed it?

22 THE DEFENDANT: I did.

23 THE COURT: Did you fully understand the document
24 before you signed it?

25 THE DEFENDANT: Yes.

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1 THE COURT: One of the features of this document, and
2 it's on page 2, is that the parties have stipulated to the
3 application of the United States guidelines to your case.

4 I wanted to make sure you understand, sir, that that
5 stipulation is binding on you and your attorneys, it's binding
6 on the government, it is not binding on me, because I'm not a
7 signatory to the agreement. This does not mean, sir, that when
8 I calculate my own guidelines calculation that I will come out
9 with something different, but I did want to make sure you
10 understand that I have an independent obligation to calculate
11 the guidelines.

12 So do you understand that, sir?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: There are also a couple of provisions I
15 would like to go over with you.

16 Sticking with this page 2, if you look at the first
17 full paragraph, sir, I understand this to be an agreement by
18 you to make restitution in an amount ordered by the Court at
19 some later date. Is that correct?

20 THE DEFENDANT: Yes.

21 THE COURT: And then also turning, please, to page 4
22 of the agreement, and I'm looking particularly at the third
23 full paragraph that begins "It is agreed."

24 Do you see that, sir?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: What I understand this to be, sir, is a
2 series of waivers that you and the government have each entered
3 into, so you want to make sure I understand them. What I
4 understand this to say is that you are waiving your right to
5 appeal or otherwise challenge any sentence that is 18 months of
6 imprisonment or below. So if I were to sentence you to a term
7 of 18 months of imprisonment or anything less than that, that
8 you would be waiving your right to appeal or otherwise
9 challenge that component of your sentence.

10 Is that correct, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: Also in this paragraph, I understand that
13 you are agreeing not to appeal or challenge any term of
14 supervised release that is less than or equal to the statutory
15 maximum that I mentioned earlier. So, again, if I were to
16 impose a term of supervised release at the statutory maximum or
17 anything less than that, you are waiving your right to appeal
18 that portion of your sentence.

19 Is that correct, sir?

20 THE DEFENDANT: Yes.

21 THE COURT: And then further on, I see that you are
22 agreeing not to appeal any fine that is less than or equal to
23 \$30,000. So were I to impose a fine of \$30,000 or something
24 less than that, you are waiving your right to appeal that
25 component of your sentence.

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1 Again, is that correct, sir?

2 THE DEFENDANT: Yes, it is.

3 THE COURT: Does this written plea agreement that
4 we've just been discussing constitute your complete and total
5 understanding of the entire agreement you have with the
6 government?

7 THE DEFENDANT: Yes.

8 THE COURT: Has anything been left out, sir?

9 THE DEFENDANT: No.

10 THE COURT: Other than what is in this agreement, has
11 anyone made any promise to you or offered you any inducement
12 either to get you to sign this agreement or to get you to plead
13 guilty here today?

14 THE DEFENDANT: No.

15 THE COURT: Has anyone threatened you or forced you
16 either to sign this agreement or to plead guilty here today?

17 THE DEFENDANT: No.

18 THE COURT: Has anyone made any promise to you as to
19 what your ultimate sentence will be?

20 THE DEFENDANT: No.

21 THE COURT: Mr. Hart, please tell me in your own words
22 what you did that makes you believe that you are guilty of the
23 offenses charged in Count One and Count Two.

24 And I'll stop you for a moment, sir. I believe you
25 have a written document in front of you. Are these your words,

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1 sir?

2 THE DEFENDANT: Yes, they are.

3 THE COURT: All right. And do you have this in front
4 of you to sort of aid you in recalling what it is you wish to
5 say?

6 THE DEFENDANT: Yes.

7 THE COURT: Please continue.

8 THE DEFENDANT: Your Honor, I did, in fact, engage in
9 acts to obstruct a pending SEC investigation during the time
10 period alleged in the information. And I did offer sworn
11 testimony to the SEC on August 19th, 2009 that was not
12 truthful.

13 From 2006 to 2011, I worked for a small investment
14 firm in Englewood Cliffs, New Jersey. In July of 2009, I
15 learned that the SEC was investigating my securities trading
16 activity, including whether I was conducting improper match
17 trades between a fund managed by my employer and a fund I
18 beneficially owned called Octagon Capital Partners, whether I
19 was trading on material nonpublic information in connection
20 with several pikes offerings.

21 As part of its investigation, the SEC in Manhattan,
22 New York sent subpoenas to me personally and also to the firm
23 where I worked. The owner was away when the SEC subpoena
24 reached the firm. I opened it and decided to respond to it
25 myself without telling the owner or any coworkers about it. I

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1 did not want the owner to know about my trading or that I was
2 under investigation by the SEC, because I was fearful that I
3 would lose my job.

4 In sending documents to the SEC in response to the
5 subpoena sent to my employer, I did not disclose to the SEC
6 that I was the only one at the company that was aware of the
7 subpoena. This was a poor decision. I took a bad situation
8 and made it worse.

9 Later, on August 19th, 2009, I sat for sworn testimony
10 before the SEC, in the SEC's office here in Manhattan. During
11 that sworn testimony, I also told several lies. Specifically,
12 I was asked about match trading conduct, that is, whether I
13 caused a fund managed by my employer to purchase securities
14 from Octagon Capital Partners at employee prices.

15 While I testified accurately that I caused trades to
16 take place between the firm that employed me and Octagon in
17 responding to questions from SEC's attorneys, I falsely stated
18 that the owner of the firm I worked for and I discussed and
19 agreed to carry out these trades as deliberate strategy for the
20 fund managed by my employer, and that we did not believe there
21 was any problem with the trading. In fact, I never disclosed
22 or discussed any of this trading with the owner of the firm.

23 I also falsely stated during my sworn testimony that I
24 spoke with the owner of the firm I worked for about the SEC's
25 investigation into my trading activity, when, in reality, I

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1 never discussed the SEC's investigation with my employer. As I
2 said earlier, I did not want the owner to find out about the
3 SEC investigation or my improper trading out of fear that I
4 would lose my job.

5 I know that the things I lied about were important to
6 the SEC's investigation and into my trading. Prior to
7 testifying, I had taken an oath to tell the truth and
8 understood I was under an obligation to provide accurate
9 testimony. When I did not do so, I knew it was wrong and I
10 knew it was unlawful.

11 Later, on or about December 8, 2009, one of the SEC
12 attorneys assigned to the investigation called our office, and
13 I answered the phone. The attorney requested a call from the
14 firm owner, but I did not relay this message. The next day,
15 the same SEC attorney called back, and again asked for the
16 owner. This time I pretended to be the owner, my employer, and
17 in summary said that I was aware of Steven Hart's improper
18 trading, but still wanted to retain him as an employee. I also
19 falsely stated that I was aware of the match trades and
20 approved of it as a means of disposing of restricted stock.

21 Two days later, during another call with SEC
22 attorneys, I again impersonated the owner and made several more
23 false statements along the same lines as the previous call in
24 which I impersonated my employer.

25 Your Honor, in pretending to be the firm's owner, I

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1 obviously did not stop to think how ill-advised this decision
2 was. Again, I took a bad decision and made it worse.

3 In conclusion, my conduct that I described to you
4 today was wrong, unlawful, and intentional. I acknowledge that
5 the conduct impeded the SEC's investigation.

6 Please note that I am sorry for what I did, and I am
7 prepared to accept responsibility for my actions. Thank you.

8 THE COURT: Thank you, sir.

9 Mr. Puvalowski, do you know of any valid defense that
10 would prevail at trial or any other reason why your client
11 should not be permitted to plead guilty?

12 MR. PUVALOWSKI: I do not.

13 THE COURT: Thank you.

14 Mr. Cowley, are there any additional questions that
15 you would like me to ask?

16 MR. COWLEY: No additional questions, your Honor, but
17 there are a few additional facts that I would like to put on
18 the record.

19 One is that, in fact, an official proceeding, that is,
20 an investigation, was opened by the SEC and was taking place
21 between July and December of 2009; that the SEC is, in fact,
22 authorized by law to administer oaths when doing things like
23 taking testimony of witnesses like Mr. Hart. And then one
24 other fact to add is that the SEC attorneys that were making
25 the calls referenced by Mr. Hart in December of 2009 were

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1 located in the SEC's offices in Manhattan, New York.

2 Additionally, your Honor, one other thing I'd like to
3 put on the record is that in May of 2014, a tolling agreement
4 was entered into between the parties; and that pursuant to that
5 agreement, the period beginning on May 23rd, 2014 and running
6 through and including May 22nd, 2015, was tolled and excluded
7 from any calculation of time for purposes of adjudicating any
8 claim based on either the statute of limitations under the laws
9 of the United States or any constitutional statutory or other
10 doctrine concerning pre-indictment delay.

11 So I just wanted to put that on the record.

12 THE COURT: Before you sit down, Mr. Puvalowski, you
13 don't dispute or challenge anything that Mr. Cowley has said;
14 is that correct?

15 MR. PUVALOWSKI: I do not. That's correct.

16 THE COURT: Thank you.

17 Mr. Cowley, could you please summarize what the
18 government's evidence would be if this case were to proceed to
19 trial.

20 MR. COWLEY: Yes, your Honor.

21 The government's evidence would consist of the
22 deposition testimony of Mr. Hart from the original deposition
23 that took place in August of 2009. It would also consist of
24 the contents of an additional deposition that Mr. Hart sat for
25 later, I believe a few years later, where he acknowledged under

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1 oath that he was, in fact, the person impersonating his
2 employer, and that he testified falsely in his previous
3 depositions. The evidence would also consist of testimony from
4 SEC staff attorneys that were present at the original
5 deposition and participated in phone calls with Mr. Hart in
6 December of 2009, thinking at the time that they were
7 interacting with others.

8 THE COURT: Thank you.

9 Mr. Hart, were you able to hear Mr. Cowley?

10 THE DEFENDANT: Yes.

11 THE COURT: And do you understand, sir, that if this
12 case were to go to trial, that is the evidence the government
13 would present?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Puvalowski, do you agree that there's
16 a sufficient factual predicate for a guilty plea?

17 MR. PUVALOWSKI: I do, your Honor.

18 THE COURT: Is there any reason why I should not
19 accept this guilty plea?

20 MR. PUVALOWSKI: No, your Honor.

21 THE COURT: Mr. Cowley, do you agree there's a
22 sufficient factual predicate for the guilty plea?

23 MR. COWLEY: I do, your Honor.

24 THE COURT: Is there any reason why I shouldn't accept
25 it?

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1 MR. COWLEY: No, your Honor.

2 THE COURT: Mr. Hart, I will ask this question just
3 because it is appropriate: Do you wish to continue, sir, to
4 enter a plea of guilty to Counts One and Two of the
5 information?

6 THE DEFENDANT: Yes.

7 THE COURT: Because you've acknowledged that you are,
8 in fact, guilty of these two offenses, because I'm satisfied
9 that you know of your rights, including your right to enter a
10 plea of not guilty and go to trial, because I'm satisfied that
11 you're aware of the consequences of your guilty plea, including
12 the range of sentences that may be imposed, and because I find
13 that you are knowingly and voluntarily pleading guilty, I will
14 accept your guilty plea to Counts One and Two of the
15 information.

16 Now, the next stage, sir, is sentencing. And I talked
17 about it a little bit earlier, because I mentioned that the
18 probation office will want to speak to you in connection with
19 sentencing in order to prepare a presentence investigation
20 report.

21 Mr. Puvalowski, do you wish to be present for any
22 interview?

23 MR. PUVALOWSKI: We do, your Honor.

24 THE COURT: Then I will order that there be no
25 interview, unless you or your colleague, Mr. Kern, is present.

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1 Mr. Hart, let me offer you the following thought and
2 you can do with it what you will:

3 If and to the extent that you speak with the probation
4 office, I would ask you to be sure that everything you say to
5 them is as truthful and as accurate as you can make it. I say
6 this, sir, because in trying to figure out how to sentence
7 someone and to what to sentence someone, the presentence
8 investigation report is very, very important to me. I read it
9 very carefully, and I tend to ask a fair number of questions
10 about it. So it helps me the most if the document is as
11 accurate as it can be.

12 I will let you know and your attorneys will let you
13 know that you have an opportunity to see the report before I
14 do. And you have the opportunity to make corrections and offer
15 corrections to the probation office if there are errors in the
16 report. You also have the opportunity to object if there's
17 something in the report that you think is objectionable. So,
18 again, I invite you -- I don't tell you you have to, but I
19 invite you to make use of those opportunities, because the most
20 complete presentence report is the most helpful thing for me.

21 Do you understand, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: Thank you.

24 Mr. Lopez, may we have a sentencing date.

25 THE DEPUTY CLERK: Yes, your Honor.

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1 Tuesday, June 23rd at 3 p.m.

2 THE COURT: Does that work for the parties?

3 MR. COWLEY: It does for the government, your Honor.

4 (Pause)

5 MR. PUVALOWSKI: Your Honor, I apologize for the
6 delay.

7 THE COURT: No, no. Whatever time you need.

8 (Pause)

9 MR. PUVALOWSKI: Would it be possible -- we're trying
10 to deal with a school schedule issue. Would it be possible
11 perhaps one week later? That's the final week of school, and
12 one week later would be appreciated.

13 THE COURT: Okay. I'm sure we can find time.

14 So the week of the 30th of June.

15 MR. PUVALOWSKI: Yes.

16 THE COURT: School will be over by then?

17 MR. PUVALOWSKI: School will be over by then.

18 THE COURT: Mr. Lopez, something that week.

19 THE DEPUTY CLERK: Yes, your Honor.

20 Thursday, July 2nd at 3 p.m.

21 MR. PUVALOWSKI: Thank you very much, your Honor.

22 THE COURT: Sure.

23 Mr. Cowley, does that work for you, sir?

24 MR. COWLEY: It does, your Honor.

25 THE COURT: Okay.

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1 Let me just remind counsel or let counsel know in the
2 first instance that I have individual rules of practice for
3 criminal cases. The important thing to know is simply that I'd
4 like the defense sentencing submission two weeks in advance of
5 sentencing, and the government's sentencing submission one week
6 in advance of sentencing so I can have a chance to look at it.

7 Mr. Cowley, any objection to continuing Mr. Hart on
8 the current bail conditions?

9 MR. COWLEY: No objection, your Honor.

10 THE COURT: Okay. Mr. Hart, then let me just advise
11 you, sir, you need to be here for the sentencing. I know you
12 know that, sir, but I need to tell you that nonetheless. Only
13 bad things can happen for you if you fail to appear for
14 sentencing. There is a separate offense of bail jumping, and
15 I'm sure that's not something you're interested in pursuing.
16 So we will leave you out on bail on the conditions we set at
17 our last proceeding. And it is my every expectation you will
18 be here on the 2nd; is that correct, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: All right.

21 Mr. Cowley, is there anything else that we should be
22 talking about in this proceeding?

23 MR. COWLEY: Not from the government, your Honor.

24 Thank you.

25 THE COURT: Thank you.

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Mr. Puvalowski, anything else?

MR. PUVALOWSKI: Nothing else, your Honor. Thank you.

THE COURT: Mr. Hart, I should have asked earlier, is there a member of your family who's here to support you today, sir?

THE DEFENDANT: Yes. It is my wife, Betsy Hart.

THE COURT: All right.

Ms. Hart, I do want to welcome you. I know these are never fun proceedings; no one has fun at a criminal conference. But it is critically important to the defendants that I see that their family members are there to support them. So I'm sure Mr. Hart is incredibly appreciative of the fact that you are supporting him through this. And I am thankful to you for coming today. So thank you very much. And I would have noted you earlier, I just wasn't sure whether you were here with him.

So thank you for coming today.

MS. HART: My pleasure.

THE COURT: Okay. Thank you. We're done.

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